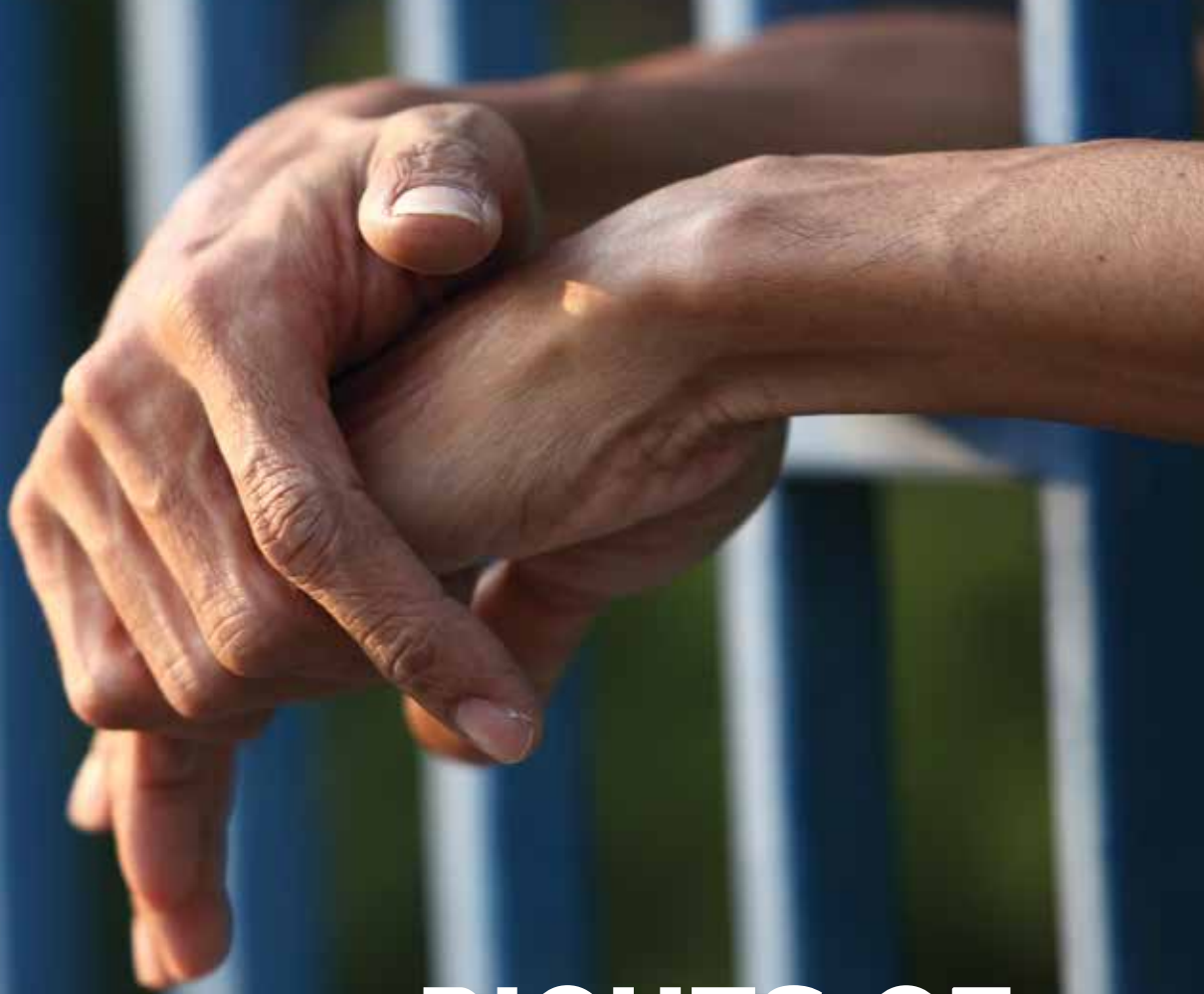




**NATIONAL HUMAN RIGHTS
COMMISSION, INDIA**



**RIGHTS OF
PRISONERS**

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**NATIONAL HUMAN RIGHTS COMMISSION
INDIA**

Rights of Prisoners

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RIGHTS OF PRISONERS IN INDIA

The Constitution of India provides equality for each and every person before the law or equal protection of laws within the territory of India. A prisoner is also guaranteed certain rights and every prisoner should be treated as a person. The courts in India, including the Supreme Court, have recognized the basic rights of prisoners. The Supreme Court has held that *“there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.”*¹

“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.” - Mahatma Gandhi

In the case of ***State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712***, the Supreme Court held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed.

Who is a Prisoner?

Prisoner is defined in the Model Prison Manual 2016 as any person confined in a prison under the order of a competent authority. It means that a prisoner is a person who is kept in jail or prison under custody because he or she has committed any act which is prohibited by the law of the land.

The terms “prison” and “jail” are used interchangeably in India. Both the convicts as well as under trials are referred to as prisoners.

¹ SC Order in Re - Inhuman Conditions in 1382 Prisons dated 5th February 2016. W.P.(C) No.406 of 2013

Categories of Prisoners

a) Criminal Prisoner

Section 3 (2) of the Prisons Act, 1894 defines “criminal prisoner” as any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court martial.

b) Convicted Criminal Prisoner

According to Section 3 (3) of the Prisons Act, 1894 a “**convicted criminal prisoner**” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of **Chapter VIII of the Code of Criminal Procedure, 1882, (10 of 1882)² or under the Prisoners Act, 1871 (5 of 1871).**

c) Civil Prisoner

Section 3(4) of the Prisons Act, 1894 defines a “**civil prisoner**” as any prisoner who is not a criminal prisoner.

Civil prisoner	Criminal prisoner
A Civil prisoner is a prisoner who has been imprisoned for an offence that is not a crime.	Criminal prisoner is a prisoner who has been imprisoned for committing a crime.

d) Convict

The Model Prison Manual 2016 defined Convict as “Any prisoner under sentence of a court exercising criminal jurisdiction or court martial and includes a person detained in prison under the provisions of chapter VIII of the Code of Criminal Procedure of 1973 and the Prisoners Act of 1900”.

e) Under-trial prisoners

The Model Prison Manual 2016 defined Under-trial prisoner as a person who has

² Chapter VIII. Security for keeping the peace and for good behaviour.

been committed to judicial custody pending investigation or trial by a competent authority.

Convict	Under-trial prisoners
A convict is “a person found guilty of a crime and sentenced by a court” or “a person serving a sentence in prison”. Convicts are often also known as “prisoners” or “inmates”.	An under-trial prisoner means a person kept in prison (judicial custody) while the charges against him or her are being tried before a competent court.

Case Illustration:

Raju has been found guilty of murder by the court and has been sentenced by the court to life imprisonment under Section 302 of Indian Penal Code. Raju is a convict.

Kunal was arrested on suspicion of having committed theft. The court has not found him guilty yet. Trial is still going on in the court. Meanwhile he is in prison (judicial custody). Kunal is an under-trial prisoner.

Separation of “Convicts” and “Under-trials”

Under-trials in the Indian Prisons are kept in the same jail where the convicted prisoners are kept. However, it has been made compulsory for the prison officers to provide separate accommodation for the under-trials. The Model Prison Manual 2016 provides that no convicted prisoner shall be kept in the same area in which under-trial prisoners are kept, or be allowed to have contact with under-trial prisoners. No convicted prisoner shall be allowed to enter the under-trial yard or block.

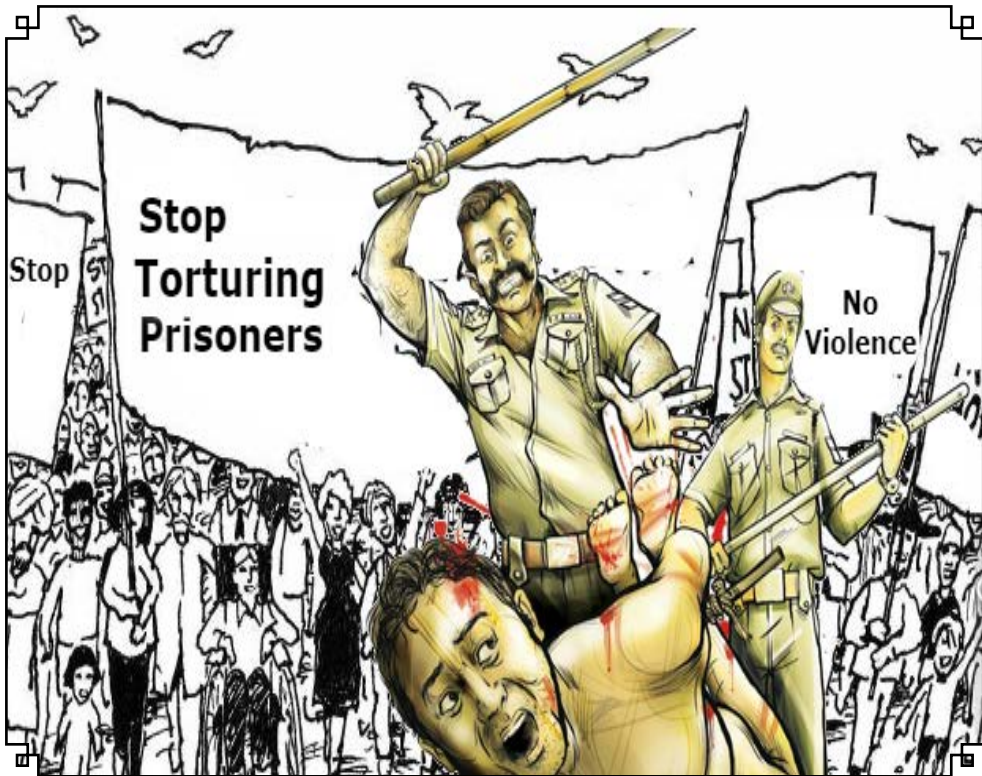


LEGAL RIGHTS OF PRISONERS UNDER INTERNATIONAL LAW

- ❖ **The International Covenant on Civil and Political Rights (ICCPR), 1966** remains the core instrumental treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979. Some of the important covenants adopted in the **ICCPR** are as follows:
 - No one shall be subjected to cruel, inhuman or degrading treatment or punishments.
 - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
 - All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
 - No one shall be imprisoned merely on grounds of inability to fulfill a contractual obligation.



- ❖ The **Geneva Convention of 1949** contains exhaustive provisions relating to the treatment of prisoners of war.
- ❖ The Geneva Convention is divided into two parts. A brief description of the two is as follows:-
 - (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge. It declares that there shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (2) Part II contains rules applicable only to the special categories dealt with in each section.
- ❖ In the 1980s, anti-torture campaign led by **Amnesty International** advocated a set of binding international prohibitions on torture.
- ❖ The 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment criminalized torture even outside these contexts, and prescribed individual criminal responsibility for a single act of torture.



- ❖ **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** was adopted by the United Nations in 1988.
- ❖ The United Nations further adopted and proclaimed the **Basic Principles for the Treatment of Prisoners** in 1990.

LEGAL RIGHTS OF THE PRISONERS IN INDIA

Prisoner's Rights under the Prisons Act, 1894

The Prisons Act, of 1894 is the first legislation regarding prison regulation in India. The provisions of the Prisons Act, 1894 contain the provisions for the welfare and protection of prisoners.

Under this Act, the prisoners (both convicts and undertrials) have various rights.

1. Right to accommodation for prisoners (Section 4)

The prisoners have the right to be provided accommodation constructed and maintained according to the provision of the Prisons Act, 1894.

The Model Prison Manual (2016) also mentions that living conditions in every prison shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc.

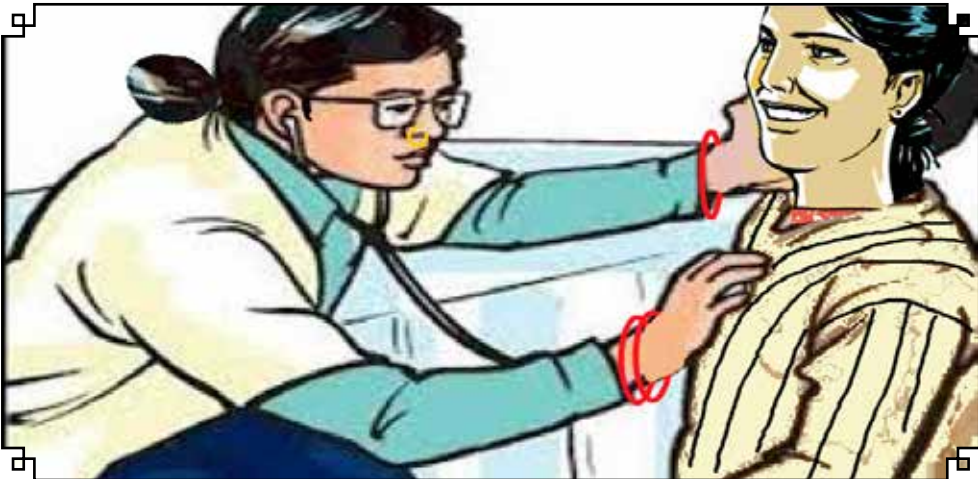
2. Right to shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison (Section 7)

If the number of prisoners in any prison is more than required and it is not convenient to transfer the excess number to some other prison, then shelter and safe custody should be provided in temporary prisons to the prisoners.

Also if there is any outbreak of epidemic disease within any prison, prisoners should be provided temporary shelter and safe custody.

3. Examination of prisoners by qualified Medical Officer (Section 24 and Section 26)

- a) Every prisoner shall be examined by the Medical Officer and he shall enter in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment and any observations which the Medical Officer thinks fit to add. (Section 24 (2))
- b) Female prisoners have the right to be examined by a lady matron under the special or general orders of the Medical Officer. (Section 24 (3))



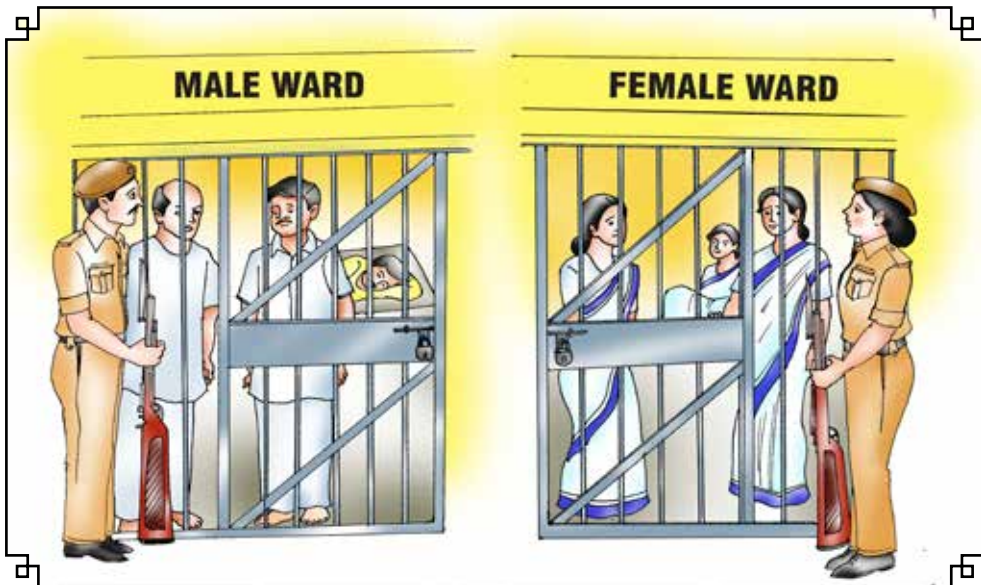
- c) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal. Section 26 (2).
- d) No prisoner shall be discharged against his will from prison, until in the opinion of the Medical Officer, such discharge is safe. Section 26(3)

4. Separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners (Section 27)

- I. In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building,

in such a manner as to prevent their seeing, or conversing or holding any intercourse with the male.

- II. In a prison where male prisoners under the age of twenty-one (21 years) are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;
- III. Undertrial prisoners shall be kept apart from convicted criminal prisoners (convicts); and
- IV. Civil prisoners shall be kept apart from criminal prisoners.



5. Maintenance of certain prisoners from private sources (Section 31)

A civil prisoner or an undertrial criminal prisoner shall be permitted to maintain himself and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and such rules as may be approved by the Inspector General.

6. Solitary Confinement. (Section 29)

No cell shall be used for solitary confinement unless it is furnished with the

means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

7. Supply of clothing and bedding to civil prisoners and undertrials. Section 33(1)

Every civil prisoner and under-trial unable to provide for himself or herself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.



8. Employment of criminal prisoners (Section 35)

- (1) Prisoners who are sentenced to rigorous imprisonment shall not be engaged in manual labour for more than nine hours in any one day, except on an emergency with the sanction in writing of the Superintendent.
- (2) The Medical Officer shall examine the prisoners from time to time while they are working and shall record their respective weights at least once every two weeks on the history ticket of each prisoner employed on labour.

- (3) When the Medical Officer is of the opinion that the health of any prisoner suffers while in employment of a particular work, such prisoner shall not be employed with that work but shall be placed on such other kind or class of work as the Medical Officer may consider suited for him.

Rigorous imprisonment

Rigorous Imprisonment means hard labour. Hard labour is not defined either in the Indian Penal Code, or in the Jail Manuals. Rigorous Imprisonment as a form of punishment started off in the British era, when it meant breaking rocks and making roads.

However, today, Rigorous Imprisonment in India has come to mean 'do some work' as Indian jails do not have enough work inside that can be termed as hard labour. So, simple imprisonment is 'doing light work' while rigorous imprisonment is 'doing hard work'.

Some of the jobs done by the jail inmates sentenced to Rigorous Imprisonment are manufacturing products like furniture, clothes, etc.

9. Sick prisoners (Section 37)

- (1) The sick prisoners or those who are appearing to be out of health in mind or body who desire to see the Medical Subordinate (doctor) shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.
- (2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind

or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

10. Hospital (Section 39)

In every prison a hospital or proper place for the reception of sick prisoners shall be provided.

11. Visits to civil and undertrial criminal prisoners. (Section 40)

The prisoners (convicts as well as undertrials shall be allowed to meet persons whom they may desire to communicate with in the prison at proper times and under proper restrictions.

Undertrial prisoners may be allowed to see their duly qualified legal advisers without the presence of any other person in the interests of justice.

Rights of Prisoners identified by the All India Committee on Jail Reforms (1980-83) (“Mulla Committee”) :-¹

A. Right to Human Dignity

- (i) Right to be treated as a human being and as a person; this right has been stressed and recommended by the Supreme Court of India which has categorically declared that prisoners shall not be treated as non-persons;
- (ii) Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by prisoners;
- (iii) Right to integrity of the mind; immunity from aggression whether perpetuated by the by staff or by fellow prisoners;
- (iv) Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.

¹ Model Prison Manual, 2016

B. Right to Basic Minimum Needs

Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic condition of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

C. Right to Communication

- (i) Right to communication with the outside world;
- (ii) Right to periodic interviews; and
- (iii) Right to receive information about the outside world through communication media.

D. Right of Access to Law

- (i) Right to effective access to information and all legal provisions regulating conditions of detention;
- (ii) Right to consult or to be defended by a legal practitioner of prisoner's choice;
- (iii) Right of access to agencies, such as State Legal Aid Boards or similar organizations providing legal services;
- (iv) Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;
- (v) Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;
- (vi) Right of effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;
- (vii) Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoners' rights and for redressal of grievances.

E. Right to Meaningful and Gainful Employment

(i) Right to meaningful and gainful employment

Note 1: No prisoner shall be required to perform 'begar' and other similar forms of forced labour which is prohibited, as it violates the fundamental right against exploitation under Article 23 of the Constitution.

Note 2: Undertrial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rules.

Note 3: No prisoner shall be put to domestic work with any official in the prison administration. Such work shall not be considered meaningful or gainful, even if some monetary compensation is offered.

Note 4: Prisoners shall, in no case, be put to any work which is under the management, control, supervision or direction of any private entrepreneur working for profit of his organization. This will not apply to open prisons and camps.

(ii) Right to get wages for the work done in prison.

F. Right to be released on the due date.

Rights of the Prisoners under the Constitution of India

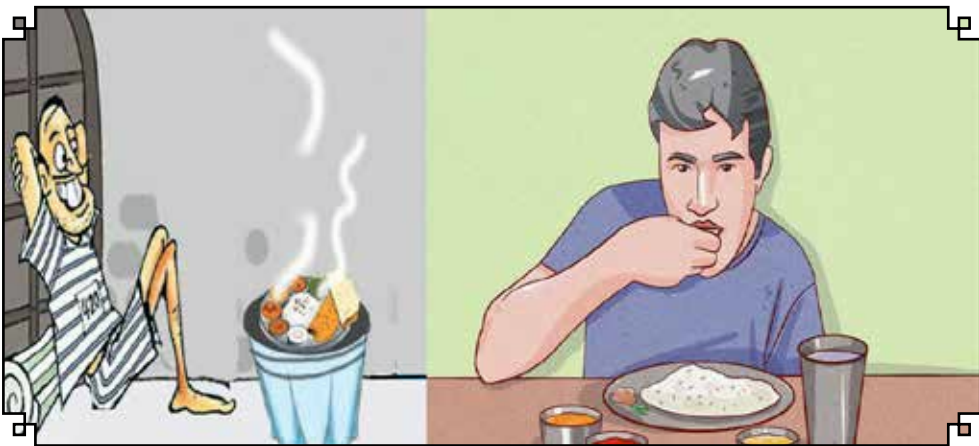
The Constitution of India guarantees the fundamental rights of all the prisoners. The Hon'ble Supreme Court in the case of *State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712*, held that a prisoner, whether a convict or under-trial, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution.

Case Illustration: Ravindra Kumar is in prison. He has been imprisoned for theft. He is a construction labourer. He does not know that he has any rights. Anil Kumar, advocate appointed by the State, came to meet him and told him about his fundamental rights.

Anil Kumar, advocate told Ravindra Kumar that even if a person is convicted of a crime and is lodged in jail; a prisoner still has his constitutional rights.

The Articles 14, 19 and 21 of the Constitution of India guarantee basic fundamental rights to every citizen of India. These rights extend to the prisoners as well.

The Hon'ble Supreme Court in the case of *T. V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68*, held that fundamental rights under Articles 14, 19 and 21 of the Constitution of India are available to the prisoners as well as freemen.



Prisoners are entitled to basic human rights, including nutritious food, like any other citizen

Article 14 of the Constitution

Article 14 of the Constitution of India guarantees that no person shall be denied equality before law or the equal protection of the law within the territory of India. Thus Article 14 means that like should be treated alike.

Article 19 of the Constitution

Under **Article 19 (1)** of the Constitution of India, there are six freedoms which are guaranteed to all the citizens of India. Article 19 (1) provides the following freedoms:-

19. Protection of certain rights regarding freedom of speech etc.

All citizens shall have the right

- (a) To freedom of speech and expression;
- (b) To assemble peaceably and without arms;
- (c) To form associations or unions;
- (d) To move freely throughout the territory of India;
- (e) To reside and settle in any part of the territory of India; and
- (g) To practice any profession, or to carry on any occupation, trade or business

But among these freedoms the prisoners can enjoy only two freedoms:-

- i) Right to freedom of speech and expression (**Article 19(1)(a)**) and
- ii) Right to freedom to become member of an association (**Article 19(1) (c)**).

Article 21 of Constitution

Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure established by law.

This Article covers two aspects of rights:-

- (i) Right to life and
- (ii) Right to personal liberty.

OTHER RIGHTS OF THE PRISONERS

1. Right of inmates to live in humane and good conditions

In the case of *Upendra Baxi v. State of U.P.*, (1983) 2 SCC 308, the Supreme Court gave various directions in order to ensure that the inmates of the protective Home at Agra did not continue to live in inhumane and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution was made real and meaningful for them.

2. Right to free legal aid

Anyone who is arrested has the right to consult a lawyer. This is a constitutional guarantee and a fundamental right.

In the case of *M.H. Wadanrao Haskot Vs. State of Maharashtra*, (1978) 3 SCC 544, the Supreme Court held that the right to legal aid is one of the ingredients of fair procedure.

If a prisoner sentenced to imprisonment, is unable to defend or appeal before the court for want of lawyer, then the court has the power under **Article 142 read with Article 21 and 39-A of the Constitution**, to assign a lawyer for such prisoner for doing complete justice.

Article 22(1) of the Constitution of India provides the right to consult and to be defended by, a legal practitioner of his choice

Article 39A of the Constitution further provides the State to provide free legal aid to the poor and weaker sections of society including the prisoners. The poor accused person has the right to avail a legal aid lawyer at the State's expense.

It was held by the Supreme Court in the case of *Hussainara Khatoon (IV) Vs. State of Bihar 1979 AIR 1369*, that the right to free legal services is an essential ingredient of 'reasonable, fair and just' procedure, guaranteed under Article 21, for a person accused of an offence.

Denial of legal aid will amount to the denial of the right to equality and result in the rights of a poor accused person being violated.



Process of availing legal aid for Prisoners

The Supreme Court, in *Sheela Barse Vs. State of Maharashtra AIR 1983 SC 378 43* directed that “whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at cost of the State, provided he is willing to accept such legal assistance.”

The Legal Services Authority Act (LSAA), 1987, (which came into operation in 1996) also provides that any person in ‘custody’ is entitled to legal aid.

Case Illustration: Geeta’s husband Gopi has been arrested by police on suspicion of robbery and taken to the police station. Gopi is a poor man. He used to drive a rickshaw to earn his livelihood. He is helpless. He cannot afford a lawyer. In such a case, as per the Supreme Court’s directions, the police will have to immediately inform the nearest Legal Aid Committee of the fact of such arrest and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to Gopi at the cost of the State, provided he is willing to accept such legal assistance.

The presence of a lawyer at the stage of arrest can make a huge difference to how the accused is treated in police custody.

A lawyer at this stage can ensure that the police perform their duties and respect the rights of the accused, including his right to be silent, and prevents harm to the accused. It reduces the possibility of beating, torture, coercion to gain 'confessions', wrongful detention, fabrication, false implication and much more.

What is bail?

Bail is the conditional release of a person arrested with the promise to appear in court when required.

An amount of money is deposited so that the suspect can be released from pre-trial detention

Further, in bailable cases, a lawyer can apply for bail at the police station itself so that pre-trial detention is kept to the minimum extent possible.

In the case of *Suk Das & Anr Vs. Union Territory of Arunachal Pradesh AIR 1986 SC 991*, the prisoner was not informed by the Additional Deputy Commissioner that he was entitled to free legal assistance nor did he enquire from the appellant whether he wanted a lawyer to be provided to him at State cost. The result was that the prisoner remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the prisoner under Article 21 and the trial was held to be defective and the conviction and sentence recorded against the prisoner was set aside.

3. Right to speedy trial

Right to speedy trial is a fundamental right of a prisoner contained in Article 21 of the Constitution of India. This right is not only for the innocent. The Constitution ensures just, fair and reasonable procedure as regards trial.

In the case of *Hussainara Khatoun v. State of Bihar, (1980) 1 SCC 81*, a shocking state of affairs in regard to giving justice came to light. An alarmingly large number of men and women, including children were behind prison bars for years awaiting trial in the court of law. The crimes/offences of some were

trivial/petty, which even if proved would not deserve punishment for more than a few months, or 1-2 years. But these persons were in jail for about 3-10 years.

The Supreme Court expressed its concern about the delay in trial and stated that the poor are denied justice because they are too poor to afford bail and the courts have no time to try them. The Supreme Court held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.

The Hon'ble Supreme Court in the case of *Rattiram v. State of M.P., (2012) 4 SCC 516* also held that the accused is entitled to a speedy trial. The whole purpose of a speedy trial is intended to avoid oppression and prevent delay.

4. Right against custodial violence and death in police lock-ups or encounters

No one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment.

Custodial violence primarily refers to violence in police custody and judicial custody. The prisoners have the right to protest against any custodial violence or torture while under the police custody. Such custodial violence may be physical torture, rape or sexual harassment, custodial death.

In the case of *Sunil Batra v. Delhi Administration, AIR 1980 SC 1579*, a convict namely Sunil Batra, who had been awarded a death sentence, wrote a letter to one of the judges of the Supreme Court informing that a jail warden was torturing another prisoner (Prem Chand) in order to extract money from the victim through his visiting relations. The letter was taken notice by the Supreme Court and proceeding was initiated upon the State and the concerned officials. The Supreme Court held that Prem Chand the prisoner, has been tortured illegally and the Superintendent cannot absolve himself of responsibility even though he may not be directly a party. Lack of vigilance is also guilt. The Superintendent was directed to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted. No irons shall be forced on the person in revengeful spirit.



No prisoner shall be subjected torture or cruel, inhumane or degrading treatment or punishment

In the case of State of *Uttar Pradesh v. Ram Sagar Yadav and Ors.*, (1985) SCC 1 552, a farmer who denied paying a bribe to the local police constable was detained and found dead within six hours of the said detention, with some 19 bodily injuries. Subsequently, the Supreme Court of India convicted the accused constable and two others, one of whom happened to be the constable's superior, a Station House Officer.

5. Right against Solitary Confinement, Handcuffing and Bar Fetters

Solitary confinement means the complete isolation of a prisoner from other co-prisoners and segregation from any kind of human contact. It entails separate confinement space for a prisoner, with only occasional access to any other person and that too only at the decision of the jail authorities. The maximum time of solitary confinement is three months in whole.

An arrested person or under-trial prisoner should not be subjected to handcuffing in the absence of justifying circumstances. In the case of *Prem Shanker Shukla Vs. Delhi Administration*, (1980) 3 SCC 526, the petitioner was an undertrial

prisoner in Tihar jail. He was required to be taken from jail to Magistrate's Court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer escorting him to the court and back that handcuffing should not be done unless it was so required. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which this case was admitted by the court.



The Supreme Court held that handcuffing is inhumane and, therefore, it is unreasonable and harsh. It is important to prevent the escape of an under-trial but to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and force him to stand in the Courts for hours is equivalent to torture and humiliation. Since there are other ways of ensuring safety, as a rule handcuffs or other fetters shall not be forced on the person of an under-trial prisoner ordinarily.

6. Right to meet friends and consult lawyer

In the case of *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579, the Supreme Court recognized the right of the prisoners to be visited by friends and relatives. The court favoured their visits but subject to search and discipline and other security criteria. Visit to prisoners by family and friends are a comfort in their isolation and prison inmates cannot be deprived of the same. The right to

society of fellow-men, parents and other family members cannot be denied.



In a latest judgment of the Supreme Court from December 2018, it was held that death-row convicts should be entitled to meet family members, lawyers and mental health professionals so that their rights are adequately protected at all stages.

Death-row convicts

A prisoner or convict can be said to be a prisoner or convict on death row when his sentence is beyond any review or appeal by the court and has become final without any intervention from any other authority. Till then, such a prisoner cannot be said to be under a sentence of death in the context of Section 30 of the Prisons Act, 1894.

7. The right of information to any friend, relative or any other person nominated by the arrested person about the arrest and the place of detention

The person who has been arrested has the right to have someone informed. This right is expressly provided in Section 50A of the Criminal Procedure Code as well.

The Supreme Court in *Joginder Kumar v. State Of U.P.*, 1994 SCC (4) 260, held

that these rights are an integral part of Articles 21 and 22(1) of the Constitution and require to be recognised and protected.

For effective enforcement of these fundamental rights, the Supreme Court issued the following requirements:

- I. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.
- II. The police officer shall inform the arrested person when he is brought to the police station of this right.
- III. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

8. Right to Reasonable Wages in Prison

Section 53 of the Indian Penal Code provides for assignment of work in cases of rigorous imprisonment, however, it does not say that the labour provided by such a prisoner has to be free. Again, it does not subject the prisoners to horrible, harsh and uncalled for duties which are at the very outset condemnable.

If a person, whether free or a prisoner, provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Article 23 of the Constitution. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be ‘forced labour’.

In the case of *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473, the Supreme Court observed that where a person provides labour or service to another or against receipt of remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word “forced labour” under Article 23.



Minimum Wage

Minimum wage is the minimum wage fixed by the state governments under the Minimum Wages Act, 1948 from time to time to be paid to employees in certain employments.

Payment of minimum wages is a mandatory requirement under the Minimum Wages Act, 1948. It has to be paid compulsorily since the non-payment thereof renders one liable to prosecution.

9. Right to expression

In the case of *State of Maharashtra Vs. Prabhakar Panduranga Sangzgiri & Anr, 1966 AIR 424*, the Supreme Court held that the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detenu its denial without the authority of law violated Article 21.



Case Illustration: Kishore (30 years) is in jail. He has a wife and 2 children of 6 years and 4 years old. They are dependent on him. He is under rigorous imprisonment. There is no one to provide for the family. Is there any hope for Kishore's wife and children?

Yes, Kishore can work in the prison and he will be given wages for his labour or services he provides. The remuneration or wage he received in the jail can be given to his wife and children. Though the remuneration may not be much but it should be reasonable to sustain a person's basic need.

10. Right to be informed about legal right

The prisoner has the following legal right:-

- Right to be informed on admission about legal right to appeal, revision, reviews either in respect of conviction or sentence
- Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction

11. Right to Communication

- Right to communication with the outside world
- Right to periodic interviews or meetings with their lawyer to ensure efficient legal representation.
- Right to receive information about the outside world through communication media.

12. Right to be examined by mental health professionals

The Supreme Court in December 2018, made a landmark judgment that death row inmates are entitled to be interviewed by mental healthcare professionals too.

The **Model Prison Manual, 2016** mandated that prisoners suffering from mental health conditions be admitted to mental health institutions, and psychiatrists and counsellors be made available to examine the prisoners periodically. It also

directs regular mental health evaluation for death row prisoners.

13. Right against double jeopardy or punishment

Article 20(2) of the Constitution of India guarantees that no person shall be prosecuted and punished for the same offence more than once.

14. Right to receive books and magazines inside the jail

A prisoner has the right to receive books and magazines inside the jail unless a particular book is determined to be unsuitable by the jail authority.

In the case of **George Fernandes v. State of Maharashtra (1964) 66 Bom LR 185**, the Bombay High Court passed direction not to put any restriction on the number of books that may be supplied to each of the petitioners unless a particular book is determined to be unsuitable by the authority.

Rights of the prisoners under the Criminal Procedure Code (Cr.P.C)

1. Right of the prisoner to be informed of arrest and bail. (Section 50)

The arrested person has the right to be informed of grounds of arrest and of the right to bail.

Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or the other grounds for such arrest.

2. Right of the prisoner to be defended by a lawyer (Section 303 and Section 304)

Section 303 CrPC empowers the prisoners to be defended by a lawyer of their choice and Section 304 of this Code provides that in certain cases legal aid is to be provided at state expense.

3. Right to Speedy trial Section 309(1)

309 (1) CrPC provides that in every inquiry or trial, the proceedings shall be held as expeditiously as possible.

4. Right to Medical examination (Section 54)

Section 54 CrPC provides for examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in lock ups.

5. Right to be present before the Magistrate without delay (Sections 57 and 76)

It is the right of the prisoner to be physically produced before the court at the time of hearing his/her case without procedural delay.

6. Right to be present during trial (Section 273)

Section 273 CrPC provides that all evidence and statements must be recorded in presence of the accused or his lawyer.

7. Right to be released on probation of good conduct on or after admonition (Section 360)

The court may instead of sentencing the prisoner at once to any punishment, direct to release him/her on probation after observing his/her good behavior in the following manners:-

- i) When any person above 21 years of age is convicted of an offence punishable with fine or with imprisonment for a term of 7 years or less, or
- ii) when any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and
- iii) no previous conviction is proved against the offender,

Such release is however to be done on the prisoner entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding 3 years) as the Court may direct and in the meantime to keep the peace and be of good behavior.

8. Right to be released on bail even if the prisoner does not have surety (Section 436 CrPC)

Section 436 Cr.P.C., which deals with the right of bail in bailable offences mandates the police or court to release an indigent/poor person on personal bond without asking for any surety. The Section allows an indigent person to execute a bond that s/he shall appear before the court and stand trial. The section states that the court shall consider any person who is unable to furnish bail within 7 days from the date of her/his arrest as indigent/poor.

Bail, and not jail, is the rule. The Supreme Court in many cases has held that depriving a person of liberty is the last resort.

UNDERTRIAL PRISONER'S RIGHTS

The under-trials have the same rights as the convicts. But some of the rights are available only to the undertrial prisoners. These rights are defined and guaranteed by both caselaw and statutes. Some provisions have been detailed below:-

1. Right to be released under Section 436-A of the CrPC.

It is the right of the undertrial prisoners who have served half the maximum sentence in prison as a matter of right to be released under Section 436-A of the CrPC.

2. Right to be released on Bail under Section 436, CrPC

If a person accused of a bailable offence is arrested or detained without warrant and is prepared to give bail, such person shall be released on bail.

However, if such accused is an indigent person and is unable to furnish surety, instead of taking bail from such person, the court may discharge him on his executing a bond without sureties for his appearance.

3. Right to be released on bail in cases pending for more than 2 years.

The Supreme Court has periodically issued 'one-time' direction in cases like **Supreme Court Legal Aid Committee v. Union of India 1994 SCC (6) 731** and in **Shaheen Welfare Assn. v. Union of India 1996 SCC (2) 61**, directing that the undertrial prisoners charged with murder can be released on bail if their cases were pending for two years or more.

Similarly, directions were given to release persons charged with comparatively minor offences, such as theft, cheating, etc., if they had been in prison for more than a year. However, this order was limited to the cases pending at the time of the order.

4. Right to be released on bail when the police investigation has not been completed within stipulated time. (Section 167, CrPC)

Where the investigation has not been completed within 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years, and 60 days for all other offences, it is mandatory upon the Magistrate to release the prisoner on bail, provided he is ready to furnish bail. This provision shields the accused from suffering incarceration on account of the inability of the investigating agency to wind up its investigation.

5. Right to be released on bail for violating fundamental rights

In one case of **Pramod Kumar Saxena vs. Union of India and Others (2008)**, where the petitioner, who was an undertrial prisoner for more than 10 years against whom 48 criminal cases were filed, approached Supreme Court for enforcement of his fundamental rights. The Supreme Court held that he must be released on bail so that he can make arrangements for the repayment of amount and also defend cases registered against him.

6. Admission to jail (Rule 2(i) Delhi Prison Rules, 1988)

Women undertrials shall be admitted to the jail/prison whenever presented for admission by police & on all days including Sunday and Jail holidays.

7. The undertrial prisoners are entitled to separate accommodation.

8. They have the right to bail, to prompt court hearing, access to lawyer and friends in preparation of defense and special rights relating to food, clothing, work and visits.

9. They are entitled to their own clothing and food. If they cannot afford, they shall be provided the same. The clothing in such cases is different from the convicted inmates.

10. They cannot be allotted any work unless they so desire.

11. They can consult their own doctors.

12. No restraint can be imposed on them beyond what is absolutely necessary to prevent escape or unauthorized communication with persons within or outside the prison.

Rights of Prisoners Sentenced to Death

Chapter XII of the Prison Manual 2016 (Chapter XI of the 2003 Manual) laid down rights of prisoners sentenced to death:-

- Provision of legal aid to prisoners sentenced to death at all stages, even after rejection of mercy petitions;
- Regular mental health evaluation for death row prisoners;
- Physical and mental health reports to certify that the prisoner is in a fit physical and mental condition;
- Procedure and channels through which mercy petitions are to be submitted;
- Communication of rejection of mercy petitions;
- Furnishing necessary documents, such as court papers, judgments, etc. to the prisoners;
- Facilitating and allowing a final meeting between a prisoner and his family¹.

¹ Prison Manual 2016

RIGHTS OF WOMEN PRISONERS

There is International agreement that the condition of prisoners, particularly women prisoners is dismal and in need of urgent improvement. The UN General Assembly adopted the **Bangkok Rules in 2011**¹, which lay out rules for the treatment of women in prison and prescribe certain non-custodial measures for women offenders. In 2015, the **Nelson Mandela Rules**² were adopted by the UN General Assembly, which set out the international minimum standard for the treatment of prisoners including women.



In the year 1987, the National Expert Committee on Women Prisoners under the chairpersonship of Justice Krishna Iyer appraised the situation of women in jails and made various recommendations. Some of the important recommendations include:

- Women prisoners should be informed of their rights under the law.
- Only women constables should conduct searches on women prisoners.

1 UN General Assembly adopted Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) in 2010 (Available at: https://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ENG_22032015.pdf)

2 UN Social & Economic Council adopted the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) in 2015 (Available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

- Women doctors should do medical check-up of women prisoners as soon as they are admitted to prison.
- Women prisoners should be allowed to contact their families and communicate with their lawyers, social workers and voluntary organisations.
- Women prisoners should be allowed to keep their children with them.
- Separate jails should be provided for women.
- Special prosecution officers should be available to present the case of women prisoners.

The Ministry of Women and Child Development, Government of India in its June 2018 Report on “**Women in Prisons**”, outlined some of the problems faced by the women prisoners and their entitlement/rights. Some of the rights of the women prisoners are:-

1. **Female Prison Staff:** The presence of women inmates requires gender-specific services, which should be provided by female staff. The Model Prison Manual prescribes the appointment of one lady DIG attached to the Prison Headquarters to look after women prisons, staff and prisoners in the state.
2. **Accommodation:** A specified size for cells and barracks in prison is prescribed in the Model Prison Manual. Barracks are meant to ideally only house 20 prisoners and dormitories to house only four to six prisoners each. Further, single occupancy rooms are to be provided to prisoners in need of privacy for the purpose of study etc. as well as segregated cells where prisoners may be kept due to concerns of violence or contagious diseases. Adequate cooling and heating facilities in barracks as well as washrooms and laundries are to be provided. Inmates are also meant to have individual secure storage compartments for their personal belongings.

The Model Prison Manual prescribes that in the case of overcrowding, priority should be given to women prisoners to transfer them to the nearest women’s prisons where feasible or to other prisons with space to house more women inmates.

3. **Sanitation and Hygiene:-** There should be one toilet and one bathing cubicle for every 10 prisoners. Women’s toilets should have safe entrances and be situated in

secure areas away from male intervention. The incorrect placement and structure of toilets and bathrooms in prison can increase the risk of sexual harassment/abuse of women prisoners.

The Model Prison Manual further estimates the daily need of water at 135 litres per inmate. It prescribes that women prisoners may have a bath or shower as frequently as necessary.

The Model Prison Manual prescribes that thorough cleaning, disinfection and pest control of the inmates' accommodation must be done periodically. No menial duties or conservancy work related to women's enclosures is meant to be carried out by the prisoners.

Every state's prison manual provides for a minimum number of clothes and undergarments to be provided to women prisoners as per climatic conditions and corresponding to basic hygiene standards.

- 4. Health:-** The Model Prison Manual provides for a hospital in every prison with separate wards for men and women. It further prescribes comprehensive health screening for women prisoners, including tests to determine presence of sexually transmitted or blood-borne diseases, mental health concerns, existence of drug dependency, etc. All prisoners are to be vaccinated at the time of admission. Special care is to be taken for elderly prisoners and needs of prisoners addicted to drugs.

Lady Medical Officers are to be appointed for care of women prisoners. Female prisoners needing treatment for mental diseases should not be admitted in prison but kept in separate enclosures of mental health hospitals.

Health screening of women inmates must be done with due regard to their privacy and dignity, their right to medical confidentiality, including their right not to share information and not undergo screening for their reproductive health history.

- 5. Nutrition:-** Prison Manuals of each State prescribe a scale of diet with standard calorie and nutritional intake for inmates. Every inmate is supposed to receive three meals a day, which are to be served fresh and hot in clean and covered areas with adequate time to consume the food. Prisoners observing religious fasts must also receive appropriate food.

The calorie intake and variety of food is to be increased for women prisoners who are pregnant or lactating and require more protein and minerals than usual. Such women are meant to receive additional milk, sugar, vegetables, fish/meat, curd, fresh fruit etc. as per the Prison Manual.

6. **Education:-** The education of illiterate young offenders (18-21 years) is considered compulsory. Prisoners who wish to pursue their formal education should be allowed to access books and study material as per rules in each State.
7. **Skill and Vocational Training:-** Opportunities for skills and vocational training should be made available in all jails. It is considered an essential part of reformation.

Fair and equal wages of women prisoners engaged in this are to be deposited in their bank accounts. The prison administration must ensure that female inmates are paid at par with male inmates. The savings accrued from working in prison are often an important support to women immediately after their release.

Various vocational training-cum-production schemes are currently implemented in jails across the country in skills such as weaving, bakery products, carpentry, tailoring, textiles, printing/book binding, making soft toys, soaps, phenyl, stamp pad ink, detergent powder etc. Some larger prisons have set up prison factories, which produce large scale goods for sale in the market.

8. **Legal Aid:-** Article 39A of the Indian Constitution provides for free legal aid to the poor and weaker sections of society and ensures justice for all.
9. **Violence:-** As per the Model Prison Manual, if a case of sexual abuse or other forms of violence faced by a prisoner is brought to light, she must be guided to seek legal recourse and lodge a complaint. A prisoner can make a complaint to the prison officials and in writing in the complaint box. Irrespective of whether she decides to file a formal complaint, she must be given immediate access to specialized psychological support or counselling. Prisoners may also file complaints under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
10. **Contact with the outside world:-** The Model Prison Manual makes provisions for inmates to interact with family members, relatives and friends on a fortnightly

basis. Inmates are allowed to write and receive letters, meet with people and take phone calls under stipulated guidelines.

A female inmate must be allowed to be accompanied by a female relative during transit from one jail to another or from the jail to the court.

- 11. Children:-** Children up to the age of six years are allowed to live with their mothers in prison if no other arrangements for their care can be made. This age limit varies from State to State. The Hon'ble Supreme Court issued guidelines in **R.D. Upadhyay vs. State of A.P. & Ors dated 13th April 2006, W.P.(C) No. 559 of 1994**, under which children in jail are entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

Before sending a pregnant woman to jail, the concerned authorities must ensure that the jail has the basic minimum facilities for child delivery, pre-natal and postnatal care.

Pregnant and lactating women are to be provided with a better diet as well as facilities to boil water and milk. Gynecological examinations of prisoners are to be performed in District Government Hospitals.

As far as possible, except in the case of high-risk prisoners, arrangements for temporary release are to be made to enable delivery of children in a hospital outside the prison. Suspension of sentence may also be considered in the case of casual offenders. Further, the birth certificate of the child should not mention the prison as place of birth to protect them against social stigma.



Awareness on child development and basic training on the health care of children is also to be provided to prison staff in order for them to respond appropriately in times of need and emergency. There is a prescribed diet for children, which is to be followed strictly and mothers are to be provided with diapers and other articles needed for the care of their child.

All children are also mandated to have access to education and recreational opportunities. The Model Prison Manual provides for a crèche and nursery school in every prison where children are present. This is important not only for the proper development of the children but also to allow their mothers to participate in education, skills and vocational training programmes of the prison.

Once the child crosses the age limit, he/she is to be placed in care of the family of the prisoner or in protective custody at an appropriate children's home. The process of removal of the child from the mother's care must be done with sensitivity towards the needs of the child, and only after ensuring that adequate alternative arrangements for the child have been done.

- 12. Re-integration in society after release:-** The psychological and physical effect of spending arduous time in jail, coupled with the social stigma attached to women prisoners makes it extremely hard for female inmates to re-integrate themselves in society on release. Family ties are often lost and economic independence is a major hurdle. As per the Model Prison Manual, sufficient advance notice is to be given to family/friends on release of female prisoners. The Mulla Committee recommends that in order to avoid the stigma of imprisonment, the female escort accompanying the woman must be dressed in ordinary clothes.

The Prisons Manual provides for after-care responsibilities of jail authorities to help released inmates integrate into society. This includes utilizing options of home leave, open prisons, halfway houses, community-based programmes etc. to ease transition. In some States, a grant is sanctioned for rehabilitation of released convict prisoners.

13. Special procedure for arrest of women:- The Cr.P.C contains certain special provisions for the arrest of women – the arrest of women after sunset and before sunrise (except with the prior permission of Judicial Magistrate First Class) is prohibited and a female arrestee is mandated to only be searched by a female officer with due regard to decency.

STATUTES ON RIGHTS OF PRISONERS

Important statutes on the prisoner's rights are:-

- (i) The Indian Penal Code, 1860
- (ii) The Prisons Act, 1894
- (iii) The Prisoners Act, 1900
- (iv) The Identification of Prisoners Act, 1920
- (v) The Constitution of India, 1950
- (vi) The Transfer of Prisoners Act, 1950
- (vii) The Representation of People Act, 1951
- (viii) The Prisoners (Attendance in Courts) Act, 1955
- (ix) The Probation of Offenders Act, 1958
- (x) The Code of Criminal Procedure, 1973
- (xi) The Mental Health Act, 1987
- (xii) The Juvenile Justice (Care & Protection) Act, 2000
- (xiii) The Repatriation of Prisoners Act, 2003
- (xiv) Model Prison Manual (2016)



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